



Howard Graves (“Graves”) was convicted in Clinton Superior Court of Class A misdemeanor battery. Graves appeals, raising the issue of whether the State presented sufficient evidence to negate his claim of self-defense.

We affirm.

### **Facts and Procedural History**

On October 10, 2003, Graves entered a tavern called “The Cave” in Frankfort and saw Earl Meeks (“Meeks”) sitting at the bar. Meeks had been Graves’s boss at a factory in Frankfort, and the two had not parted on good terms. Graves came up behind Meeks and embraced him in a bear hug. The bartender then asked Graves to leave, which he did. Meeks also left shortly thereafter.

Meeks walked to a nearby bar called “Night Moves.” Graves was still outside, and he followed Meeks to the bar. Once they got inside, Graves began making gestures at Meeks. The bartender told them there was to be no fighting inside, and Meeks then left the building. Graves followed him outside and continued yelling gibberish at Meeks. Meeks asked him what was the matter, and Graves continued yelling. Meeks then waved Graves off, turned, put his hands in his pockets, and walked toward his vehicle. Graves then hit Meeks in the side of the face with something that felt like metal. Meeks fell to the ground, landing on his elbow, with his hands still in his pockets. His forehead was bleeding. Meeks did not have time to remove his hands from his pockets before Graves straddled him and hit him several more times in the face, causing Meeks to lose consciousness. Officer Michael Cesare (“Officer Cesare”) was in the area and witnessed the attack. He immediately came to restrain Graves.

On October 14, 2003, the State charged Graves with Class C felony battery resulting in serious bodily injury. After a jury trial, Graves was convicted. He appealed on the grounds that the trial court had erroneously denied appointing him pauper counsel. On April 12, 2005, our court reversed and remanded Graves's case.

On December 20, 2006, a second jury trial commenced. The day before the trial began, Graves filed a notice of intent to assert the claim of self-defense. Graves was convicted of Class A misdemeanor battery. Graves was sentenced to eight months in the Indiana Department of Correction. Graves now appeals. Additional facts will be provided as necessary.

### **Discussion and Decision**

Graves challenges the sufficiency of the evidence, contending the State failed to rebut his claim of self-defense. Specifically, Graves claims that his own testimony at trial indicated that Meeks was searching in his pocket, and Graves attacked him because he considered himself to be in danger.

A valid claim of defense of oneself or another person is legal justification for an otherwise criminal act. In order to prevail on such a claim, the defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. If a defendant is convicted despite his claim of self-defense, this Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. . . . The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. We neither reweigh the evidence nor judge the credibility of witnesses. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed.

Wilson v. State, 770 N.E.2d 799, 800-801 (Ind. 2002) (internal citations omitted).

Upon review of the transcript, we conclude that Graves's argument is merely a request to reweigh the evidence and judge the credibility of the witnesses, which we may not do. In addition to Meeks's testimony, the State presented two other witnesses who said that Graves's attack on Meeks was unprovoked. Crystal Parsons ("Parsons"), a passerby on Main Street, testified that she saw Graves attack Meeks, punching him in the side of the face and then raining down blows upon him until a police officer came to restrain him. Tr. p. 142. She said that from her vantage point, Meeks had done nothing to provoke the attack. Id. at 144. Officer Cesare also testified that he had witnessed the attack. He said he saw Graves punch Meeks so hard that he fell to the ground and then continue to punch Meeks in the face. Officer Cesare likewise said that he had not seen Meeks do anything to provoke such an attack and that Meeks remained passive while Graves was attacking him. Id. at 167.

Furthermore, even if Graves had initially feared being attacked by Meeks, Graves's claim of self-defense must fail because of his failure to withdraw from the encounter. A mutual combatant, whether or not the initial aggressor, must declare an armistice before he or she may claim self-defense. Ind. Code § 35-41-3-2(e)(3) (2004 & Supp. 2006); Wooley v. State, 716 N.E.2d 919, 926 (Ind. 1999).

The State presented more than sufficient evidence to negate the claim of self-defense beyond a reasonable doubt.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.